

REMARKS

Reconsideration is requested.

Claims 1-4, 20, 22-24, 26-29 and 31 have been canceled, without prejudice.

Claims 5, 6, 12, 13, 32 and 34-41 have been allowed. Claims 7, 8, 17, 18 and 30 have been amended above to obviate the remaining formal rejections. Claims 5-19, 21, 25, 30 and 32-41 are pending.

Specifically, claims 7 and 8 have been amended to obviate the claimed objections noted in paragraph 5 of the Office Action dated May 19, 2003 (Paper No. 31). Withdrawal of the object is requested.

Claims 18 and 30 have been amended above to obviate the Section 112, second paragraph, rejection of claims 18 and 30 noted in paragraph 8 of Paper No. 31. Withdrawal of the Section 112, second paragraph, rejection of claims 18 and 30, is requested.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested.

The applicants note that the Examiner has withdrawn the previous Section 103 rejections of the claims in response to the Amendment filed January 28, 2003. The Amendment of January 28, 2003, was responsive to the Office Action of October 28, 2002, which rejected a number of the claims as allegedly having been obvious in view of Campbell (Journal of Clinical Microbiology 31, 2255-2262, 1993), Genbank Accession No. X70821 (1993), Elmore (Genbank Accession No. L35496, 23 August 1994), Wadsworth (Biochem Journal, 268: 123-128, 1990), Hatheway (Applied and Environmental Microbiology, 31(2):234-242, 1976) and Kink (U.S. Patent No.

Elmore et al
Appl. No. 08/981,087
August 19, 2003

5,736,139). In making the rejection, the Examiner indicated her presumption that the subject matter of the various claims was commonly owned at the time any inventions covered by the claims were made absent any evidence of the contrary. The applicants have now appreciated that certain of the claims were not commonly owned at the time the invention was made. The Examiner indicated an obligation under Rule 56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a). As the Section 103 rejections have been withdrawn in view of the applicants previous arguments, such further disclosure is not believed to be required however the Examiner is requested to advise the undersigned if otherwise in which case the applicants would be happy to provide any further requested information.

The Examiner is requested to contact the undersigned if anything further is required in this regard or if a teleconference would be helpful.

A Notice of Allowance is requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



B.J. Sadoff
Reg. No. 36,663

BJS:plb
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100